Joanna K. McIntosh
Vice President
International
Federal Government Affairs

Suite 1000
1120 20th Street, NW
Washington DC 20036
202-457-3808
FAX 202-457-3205

February 1, 2002

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements.

Dear Ms. Blue:

On behalf of AT&T Corp. ("AT&T"), I am pleased to respond to the request of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3107, concerning implementation of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

AT&T greatly appreciates USTR's important past work to encourage Mexico and South Africa to meet their commitments in basic telecommunications and value-added network services under the WTO General Agreement on Trade in Services ("GATS"). Notwithstanding these past efforts, significant problems remain in both countries, and AT&T urges USTR to continue to take all necessary action to ensure that they comply with their obligations as quickly as possible.

I. MEXICO.

USTR has made major efforts to bring Mexico into compliance with its WTO commitments for basic telecommunications services, and has engaged Mexico in a continuing series of negotiations and consultations on a wide range of barriers to effective competition, including the lack of effective regulation of Telmex, the need for cost-based interconnection in Mexico, and the removal of anti-competitive cross-border regulations. Although progress has been made as the result of these efforts, major problems remain to be resolved concerning Mexico's failure to allow fully open markets in both international and domestic services.

Mexico is the second largest U.S. international route, and U.S. carriers have invested hundreds of millions of dollars in Mexican competitive carriers. As well as being of critical importance to the U.S. telecommunications industry and U.S. consumers, resolution of the continuing concerns summarized below would greatly benefit Mexican carriers and consumers by encouraging greater market growth, lower prices and more innovative services.

International services: Four years after the effective date of the WTO Agreement, Mexico has still failed to implement its WTO commitments requiring the removal of Mexico's regulatory barriers to international competition and the provision of cost-based, nondiscriminatory termination rates for cross-border calls. Mexico maintains international regulations mandating a Telmex monopoly over the negotiation of settlement rates, requiring the use of those rates by all Mexican carriers, and preventing the use of the alternative commercial arrangements available in many other countries for the origination and termination of switched international traffic over international private lines outside the settlement rate and proportionate return system -- also known as "international simple resale" or "ISR" services, which the FCC has now authorized on sixty-seven U.S. international routes.[1]

These barriers violate Mexico's WTO commitments and harm U.S. consumers by denying U.S. carriers the ability to avoid Telmex's high settlement rates on calls to Mexico. U.S. suppliers of cross-border services to Mexico are entitled under the WTO Reference Paper to interconnect these services on non-discriminatory terms and at cost-oriented rates at any technically feasible point in the network of Telmex.

The inability of U.S. carriers to obtain reasonable termination charges for calls to Mexico has caused significant harm for many years to U.S. consumers. With no competition or alternative termination methods to reduce U.S.-Mexico cross-border termination rates to cost, U.S. consumers pay over $650 million per year in subsidies to Mexican carriers, keeping international calling prices to Mexico artificially high. In contrast, U.S. consumer rates for calls to Canada, where U.S. carriers now pay 3-4 cents to terminate calls, are as low as 7 cents per minute. And, in today's highly competitive global marketplace, U.S.

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[1] *See* www.fcc.gov/ib/isr.html.

carriers must obtain cost-based termination arrangements in foreign countries if they are to compete effectively with the dominant foreign carriers that now have access to the U.S. market as the result of the WTO Agreement. Indeed, removal of Mexico's barriers to international competition would benefit consumers and carriers on both sides of the border by reducing prices, encouraging new services and stimulating market growth.

Both the existing Telmex settlement rate with U.S. carriers of 19 cents per minute and the proposed 2001-2003 rates currently pending before the FCC remain well above U.S. carriers' termination rates in competitive countries and considerably in excess of the costs Telmex incurs in terminating U.S. traffic of below 4 cents per minute. AT&T has shown in a study filed with the FCC that Mexican carriers pay Telmex less than 4.5 cents per minute today for the facilities and services required to terminate calls from the United States. Unless Mexico removes its barriers to cross-border competition, Telmex will continue to receive huge subsidy-laden settlements payments from U.S. carriers that will keep U.S. calling prices artificially high.

Domestic services: Mexico has also failed to establish the level competitive playing field for domestic services required by its WTO commitments, thus preventing the new carriers in Mexico, including AT&T's affiliate Alestra, from competing with Telmex on a fair and equal basis. These carriers are unfairly disadvantaged by the longstanding failure of Cofetel, the Mexican regulator, to enforce its regulations and ensure that Telmex does not abuse its market power in its dealings with its competitors, and by Cofetel's failure to ensure that Telmex's competitors may interconnect with Telmex's network at any technically feasible point, under non-discriminatory terms and at cost-oriented rates. Immediate action by Cofetel is required in the following areas:

Enforcement of Dominant Carrier Safeguards: Cofetel has still taken no action to enforce the dominant carrier regulations issued on September 8, 2000, just as Cofetel has taken little enforcement action in response to the numerous complaints filed since 1997 by competitive carriers concerning anticompetitive actions by Telmex. Unfortunately, the September 2000 dominant carrier regulations are generally the same as rules already in place, and provide no new method of enforcement. Moreover, Telmex has appealed these new rules in the Mexican courts, further delaying their implementation, and it is not clear when the Mexican Courts will resolve these issues.

Among the key requirements of the dominant carrier rules that Cofetel has yet to enforce, despite Telmex's non-compliance, are for: the authorization of Telmex's tariffs, to ensure that Telmex does not engage in anticompetitive below-cost pricing; the establishment of cost-based rates for directory services, collect services, operator services, and other services provided by Telmex to its competitors; Telmex's adherence to quality and delivery time requirements for services provided to competitors; and Telmex's compliance with accounting separation rules.

Billing and Collection: Mexico has similarly failed to enforce the requirement of the September 2000 dominant carrier rules that Telmex must offer a billing and collection service to its competitors under cost-based, non-discriminatory terms and conditions. Telmex has refused both to provide such requested services or to disclose the terms and conditions under which it provides such services to its affiliates. Cofetel has not responded to numerous complaints regarding billing and collection concerns filed as early as 1997.

Interconnection: Telmex's competitors are disadvantaged by the above-cost domestic interconnection rates they must pay Telmex, particularly the so-called "off-net" interconnection charges that the competitive carriers pay to terminate their customers' long-distance calls in geographic areas not yet open to long-distance competition or otherwise not served by competitive carriers' long-distance networks. The interconnection resolution issued by Cofetel on October 11, 2000 recognized that off-net termination is interconnection and required the establishment of an off-net interconnection rate determined by subtracting from the lowest Telmex retail price the cost of network elements not required by competitive carriers purchasing these services. The resale rate is currently about 8 cents per minute, about four times the level of a cost justified rate, while similar call termination is routinely available in competitive countries for 2 to 3 cents per minute.

Although the interconnection resolution requires Telmex to provide the breakdown of its lowest retail price by network functions and elements to Cofetel within ten business days of the issuance of the resolution, Telmex has still not provided this information. Furthermore, Cofetel has taken no further action on the matter, although the interconnection resolution requires Cofetel in such circumstances to determine an offnet interconnection rate on the basis of the best available information. Therefore, Cofetel has still failed to establish any rate for off-net interconnection with Telmex, let alone the cost-oriented rate required by the WTO Reference Paper.

The domestic long-distance "on-net" interconnection rate (*i.e.*, for call origination and termination in cities served by competitive long-distance networks) is now 1.53 cents per minute (including surcharges for call attempts and special projects), although similar long-distance interconnection in competitive countries is routinely available for about one cent per minute. The interconnection rate was established in negotiations between Telmex and competitive carriers in December 2001, after Cofetel failed to intervene and set the applicable interconnection rate for 2002 as it was asked to do by competitive carriers, and as Cofetel's rules require.

Mexico has also failed to ensure timely, non-discriminatory, cost-based interconnection for local calls. Although Telmex has recently provided local interconnection to several carriers, Telmex has imposed several restraints to prevent full and fair competition. For example, local number portability is not provided, contrary to the requirements of Mexican law, and Telmex has imposed a discriminatory "bill and keep" system excluding data traffic that benefits only Telmex. The lack of interconnection quality standards also results in routing and programming failures for competitors' local service traffic. Furthermore, Telmex imposes several restrictions on the provision of transit services between local service providers and long distance networks that increases competitors' costs and results in degraded service levels.

Unbundling of the local loop: Mexico has failed to provide unbundled interconnection rates for access to Telmex's network, including unbundled charges for the local loop, as required by the WTO Reference Paper. Unbundling allows other suppliers to purchase selectively only those components of the network actually needed. Pursuant to the Reference Paper, Cofetel should ensure that interconnection rates with Telmex are "sufficiently unbundled so that [competitive suppliers] need not pay for network components or facilities that [they] do[] not require for service to be provided."

Prohibition on Foreign Control: Mexico should eliminate its prohibition on foreign control of Mexican "concessionaires" (carriers authorized to own and operate basic telecommunications facilities), which is also contrary to Mexico's WTO obligations.

II. SOUTH AFRICA.

There are important continuing concerns relating to the provision of value-added network services ("VANS") in South Africa -- which are still the only telecommunications services open to competition in that country. Telkom, the incumbent monopoly telecommunications operator in South Africa, still denies all new telecommunications facilities to AT&T and many other VANS suppliers, as it has done (apart from one brief interlude) since 1999. Moreover, the South African Government has still failed to prevent this blatant abuse of monopoly power, although USTR emphasized the need for such action in the 2001 Section 1377 review. Additionally, South Africa has enacted new legislation since last year's review that raises further concerns about its compliance with its WTO commitments.

Telecommunications Facilities for VANS: South Africa committed to open its market for VANS under the 1994 WTO General Agreement on Trade in Services (GATS). Prior to making these commitments, and following their entry into force, AT&T and other non-South African suppliers of VANS enjoyed reasonable and non-discriminatory access to the network of the monopoly telecommunications supplier, Telkom. AT&T, or its predecessors, has provided VANS to customers in South Africa since 1985, and presently serves approximately 500 small, medium and large business customers, including leading companies in many key sectors of South Africa's economy, such as the banking, brewing, manufacturing, minerals and mining industries.

The use of telecommunication facilities to form backbone networks and to provide services to customers is central to the provision of VANS, which combine telecommunication facilities provided by an underlying carrier with added value to produce a new service. Like all other competitive suppliers of VANS in South Africa, AT&T leases from Telkom all telecom facilities used to provide VANS to its customers, including backbone facilities and customer access lines.

In mid-1999, however, Telkom unilaterally began to deny access to the new telecommunications facilities VANS suppliers require to serve their customers, although Telkom continued to provide those facilities to its own VANS services. In November 2000, Telkom filed a complaint with the Independent Communications Authority of South Africa (ICASA), the South African regulator, alleging that AT&T was providing services outside the scope of its VANS licenses. AT&T demonstrated the falsity of these allegations in a detailed response to Telkom's complaint filed in March 2001. ICASA has not ruled on Telkom's complaint, and Telkom continues to deny new telecommunications facilities to AT&T. Telkom also continues to deny new telecommunication facilities to many other VANS suppliers.

South Africa's failure to ensure that non-South African VANS suppliers receive the public telecommunications facilities they require to provide VANS services in South Africa, and to prevent Telkom from discriminating against those suppliers in favor of its own competing services, is contrary to South Africa's WTO obligations, which include commitments to provide market access and national treatment for VANS services. (*See* South Africa, Schedule of Specific Commitments, WTO Doc. GATS/SC/78, Apr. 1994, pp. 12-13.) South Africa is also required under GATS Article 8 to prevent a monopoly supplier such as Telkom from acting in a manner inconsistent with South Africa's obligations or from abusing its monopoly position when competing in the supply of a service outside the scope of its monopoly rights. Moreover, under the WTO Annex on Telecommunications, South Africa is required to ensure that non-South African VANS suppliers receive "access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."

As USTR stated in the 2001 Section 1377 Annual Review, "The refusal of South Africa's monopoly basic telecommunications provider, Telkom, to provide access to and use of its network for value-added network service providers greatly undermines the ability of such businesses to operate."[2] USTR urged the South African Government to "ensure that

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[2] Office of the U.S. Trade Representative, *Annual Review of Telecommunications Trade Agreements Highlights Concerns in Columbia, Mexico, South Africa, and Taiwan*, Apr. 2, 2001.

providers of such services can operate consistent with South Africa's WTO obligations"[3] and specifically "to reinstate and enforce a recent ruling prohibiting Telkom from denying access to VANS without explicit authorization of the regulator."[4] Disappointingly, the South African Government has taken no such action.

Telecom Amendments: South Africa has recently adopted legislation amending its domestic statute governing the provision of telecommunications services, the Telecom Act of 1996. Although the final legislation does not include some provisions that would have made it impossible for competitive VANS suppliers to continue their operations in South Africa, AT&T and other VANS suppliers remain concerned by several other provisions in the final version.

The legislation allows only the second national operator to provide resale services before 2005, and only for a two-year period, which is not consistent with South Africa's WTO commitment to liberalize resale service by 2003.[5] The legislation also reduces the role of the independent regulator, ICASA, by moving licensing authority from ICASA to the Minister of Communications and by also making the Minister, rather than ICASA, responsible for the Universal Service Fund. Additionally, the legislation would allow Telkom and the proposed second national operator, but not VANS providers, to provide VOIP, thus allowing Telkom and the second national operator to derive an unfair competitive advantage over their VANS competitors by packaging voice with VANS services. Also, VANS providers are concerned that a reference in the legislation to CPE as a public switched telecommunication service (apparently an oversight, since another proposed provision with this effect was removed) should not mistakenly be read to impede the competitive provision of CPE in South Africa. Any such result would adversely affect VANS providers, which use this equipment as their means of delivery to, and interaction with, consumer and business users.

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3 *Id.*

4 *Id., USTR Fact Sheet, Background on the 2001 Section 1377 Review*.

5 *See Fourth Protocol to the General Agreement on Trade in Services*, WTO, 15 Apr., 1997, South Africa – Schedule of Specific Commitments, page 2 ("Liberalization of resale services to take place between 2000 and 2003 with authorities to define terms and conditions").

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AT&T would be pleased to provide any further information that would be helpful to the Committee.

Respectfully submitted,

Joanna McIntosh
Vice President
International Affairs